
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lotus Communications Corporation)	File Number EB-04-LA-085
)	
Registrant of Antenna Structure)	NAL/Acct. No. 200432900008
Los Angeles, California)	FRN 0001529171
ASR # 1015922)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 29, 2004

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Lotus Communications Corporation ("Lotus"), registrant of antenna structure # 1015922, in Los Angeles, California, apparently repeatedly violated Section 303(q) of the Communications Act of 1934, as amended, ("the Act"),¹ and Sections 17.21(a), 17.47, 17.48 and 17.49 of the Commission's Rules ("Rules")² by failing to comply with the antenna structure lighting, monitoring and notification requirements specified for antenna structure # 1015922. We conclude, pursuant to Section 503(b) of the Act,³ that Lotus is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On March 22, 2004, the Los Angeles Police Department ("LAPD") notified its flight crews of tower light outages on towers near the intersection of Martin Luther King Boulevard and Coliseum Street in Los Angeles, California. On March 23, 2004, the LAPD sent a complaint to the FCC concerning the tower light outages and, later on March 23, 2004, a field agent from the Commission's Los Angeles Field Office inspected antenna structure # 1015922, located at 4557 Martin Luther King Boulevard, Los Angeles, California.⁴ Lotus is the registered owner of the antenna structure. Lotus is also the licensee of KWKW(AM) which broadcasts from the antenna structure array. The antenna structure is required to have "Obstruction Marking and Lighting" in accordance with the applicable paragraphs of FCC Form 715/715A.⁵ Specifically, the structure is required to have a flashing red beacon mounted on the top of the

¹47 U.S.C. § 303(q).

²47 C.F.R. §§ 17.21(a), 17.47, 17.48 and 17.49.

³47 U.S.C. § 503(b).

⁴This antenna structure is designated as tower two (2TA2) of a two-tower transmitting array. The other tower of this array is ASR # 1015921, also registered to Lotus.

⁵FCC Forms 715/715A Paragraphs 1, 3, 12, 21.

antenna structure.⁶ On levels at approximately two-thirds and one-third of the overall height of the structure, there is a requirement of at least two red obstruction lights.⁷ The lights on the structure are required to burn continuously or be controlled by a light sensitive device.⁸ During the inspection on March 23, 2004, the field agent observed that the antenna structure's top beacon and three of the four intermediate level side lights were not functioning. The field agent then contacted the Federal Aviation Administration ("FAA") and the FAA representative indicated that they had not previously been notified of the tower light outage for antenna structure # 1015922.⁹

3. On March 24, 2004, a field agent from the Los Angeles Office notified the Senior Vice President of Lotus that the lights on antenna structure # 1015922 were not functioning properly. The Lotus executive acknowledged that while station personnel are required to check the remote light indicator every night for Lotus, they sometimes failed to do the required checks. The executive also indicated that the remote automatic alarm system was no longer functioning because of a number of false alarms. On March 25, 2004, the Lotus executive contacted the field agent, thanked him for "notifying us of a problem," and stated that Lotus was "trying to develop ways [to] electronically back up the monitoring system," noting that the "biggest problem is operator error" The Lotus executive told the field agent that the light outages would be repaired by March 31, 2004. An inspection by the field agent on April 2, 2004, revealed that the extinguished lights on the tower were still not functioning. A subsequent inspection on April 9, 2004, showed that the lights had been repaired.

4. On April 6, 2004, an agent from the Los Angeles Office conducted an inspection of the station logs with the station engineer for KWKW(AM). The agent observed that the station logs for March 22, 2004, and March 23, 2004, did not note any outages concerning the antenna structure lights. Although Lotus, the licensee of KWKW(AM) was notified by the field agent on March 24, 2004, that the lights on the antenna structure were not functioning properly, the station logs from March 24, 2004, through April 2, 2004, continued to show no light outages on antenna structure # 1015922. The station engineer also stated to the field agent that the station personnel are unable to identify which tower has a lighting problem, because the automatic system monitors the combined current draw of both towers in the array.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

⁶FCC Forms 715/715A, Paragraph 3.

⁷FCC Forms 715/715A, Paragraph 12.

⁸The light sensitive device shall be "adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky intensity of about 58 foot candles." FCC Forms 715/715A Paragraph 21.

⁹After a subsequent conversation with the field agent on March 23, 2004, the FAA issued a Notice to Airmen ("NOTAM") advising pilots of the light outage on the antenna structure.

¹⁰Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are

6. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹² Part 17 of the Rules is designed to promote air safety, by prescribing regulations for antenna structures that constitute or that potentially constitute "a menace to air navigation."¹³ Antenna structures that exceed 200 feet above ground level ("tall antenna structures") are deemed to constitute or potentially constitute such a menace.¹⁴ Section 17.21(a) of the Rules states antenna structures shall be painted and lighted when they exceed 60.96 meters (200 feet) in height above the ground or they require special aeronautical study.¹⁵ Antenna structure # 1015922 is 112.5 meters in height and is assigned FCC lighting specifications requiring that the structure have a red obstruction beacon mounted at the top of the antenna structure and at least two red obstruction lights on levels at approximately two-thirds and one-third of the overall height of structure. On March 22, 2004, a LAPD representative notified its flight crews of the tower light outage on the antenna structure # 1015922 and then complained to the FCC.¹⁶ On March 23, 2004, a Commission field agent observed that the top beacon and three of the four intermediate side lights were not functioning. On March 25, 2004, a Lotus executive thanked the field agent for "notifying us of a problem" and stated that the lights would be replaced by March 31, 2004. However, the lights were not replaced until after April 2, 2004.

7. Section 17.48 of the Rules requires the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications to report immediately by telephone or telegraph to the nearest Flight Service Station ("FSS") or office of the FAA any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. The Commission was notified that the light outages on antenna structure # 1015922 occurred as early as March 22, 2004. On March 23, 2004, a Commission field agent contacted the FAA and a FAA representative indicated that no outage for antenna structure # 1015922 had been reported.

8. Section 17.47(a)(1) of the Rules requires the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications to make an observation of the antenna structure's lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights.¹⁷ Alternatively, Section 17.47(a)(2) of the Rules requires antenna structure owners to provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.¹⁸ On March 24, 2004, an executive for the tower owner indicated that station personnel did not routinely perform the required observations, and also indicated that the remote automatic alarm system was no longer functioning. To the extent an automatic monitoring system was functioning, the station engineer indicated to a Commission field agent that station personnel were unable to determine which tower had lighting outages when using it.

9. Section 17.49 of the Commission's Rules requires the owner of each antenna structure

(...continued from previous page)

assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹²47 U.S.C. § 303(q).

¹³47 C.F.R. § 17.1(a).

¹⁴47 C.F.R. § 17.7(a).

¹⁵47 C.F.R. § 17.21(a). See *Max Media of Montana, LLC*, 18 FCC Rcd 21375 (2003).

¹⁶See *AAT Communications Corporation*, 19 FCC Rcd 2357 (2004).

¹⁷47 C.F.R. § 17.47(a)(1).

¹⁸47 C.F.R. § 17.47(a)(2).

which is registered with the Commission and has been assigned lighting specifications to maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light and include information concerning the date, time and nature of the extinguishment or improper functioning; the date and time of FAA notification; and the date, time and nature of adjustments, repairs, or replacements made. A review of the logs kept by KWKW(AM) concerning the tower reveals that no records were kept that indicated any outages on March 22 and 23, 2004. The logs further failed to indicate any outages between March 24 and April 2, 2004, even though Lotus, the licensee of the station, was notified of the outages on March 24, 2004, by a Commission field agent.

10. The tower light outages on antenna structure # 1015922 began as early as March 22, 2004, and perhaps earlier, and extended at least through April 2, 2004. It appears that Lotus was not aware of the outages until notified by a Commission field agent on March 24, 2004, apparently because Lotus repeatedly failed to effectively monitor the lights on the tower and that Lotus repeatedly failed to record observed or known outages. Lotus' lack of vigilance also, apparently, resulted in its failure to notify the FAA within 30 minutes of the extinguishment of the obstruction lighting on its antenna structure. Based on the evidence before us, we find that Lotus repeatedly violated Section 303(q) of the Act and Sections 17.21(a), 17.47, 17.48, and 17.49 of the Rules by failing to comply with the antenna structure lighting, monitoring and notification requirements for its antenna structure # 1015922.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with the prescribed lighting and/or marking for an antenna structure is \$10,000.¹⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Lotus Communication Corp. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violations of Section 303(q) of the Act, and Sections 17.21(a), 17.47, 17.48 and 17.49 of the Rules.²¹

13. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Lotus Communication Corp. shall pay the full amount of the proposed forfeiture or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom,

¹⁹12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

²⁰47 U.S.C. § 503(b)(2)(D).

²¹47 U.S.C. §§ 303(q), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.21(a), 17.47, 17.48, 17.49.

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Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos, California, 90703 and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²²

18. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the address indicated above for the response. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

19. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Lotus Communications Corporation, 3301 Barham Blvd., Suite 200, Los Angeles, California 90068 and to Lotus Communications Corporation DBA = KWKW, 6290 Sunset Blvd., STE 1600, Los Angeles, California 90028.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director
Los Angeles Office
Western Region
Enforcement Bureau

Enclosure: FCC List of Small Entities

²² See 47 C.F.R. § 1.1914.

